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4 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
5 AT TACOMA

6 CLARENCE D JOHNSON JR,

7 Plaintiff,

8 v.

9 NEW YORK COURT OF APPEALS, et al.,

10 Defendants.

Case No. C21-5101 RJB

REPORT AND
RECOMMENDATION

Noted for June 4, 2021

11 This matter comes before the Court on plaintiff's motion to proceed *in forma*
12 *pauperis* and proposed complaint. Dkt. 1,3. Plaintiff is proceeding *pro se* in this matter.
13 This matter has been referred to the undersigned Magistrate Judge. *Mathews, Sec'y of*
14 *H.E.W. v. Weber*, 423 U.S. 261 (1976); 28 U.S.C. § 636(b)(1)(B); Local Rule MJR
15 4(a)(4). For the reasons set forth below, the undersigned recommends that the Court
16 deny plaintiff's application to proceed *in forma pauperis*.

17 BACKGROUND

18 Plaintiff brings this action against a number of defendants including President
19 Biden, President Trump, President Obama, the United States Federal Bureau of
20 Investigations, the United State Internal Revenue Service, the United States Postal
21 Service, the Federal Communications Commission, the New York Court of Appeals,
22 Judge Katzman, Judge Preska, Queen Elizabeth, Canada and the United Nations. Dkt.
23 1-1. Yet plaintiff's proposed complaint does not allege any facts. Dkt. 1-1. Instead, the
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1 complaint vaguely asserts that defendants have violated his due process rights by
2 committing treason, failing to follow foreign policy and committing other unspecified
3 crimes. Dkt. 1-1.

4 DISCUSSION

5 The Court must dismiss the complaint of a litigant proceeding *in forma pauperis*
6 “at any time if the [C]ourt determines” that the action (i) “is frivolous or malicious”; (ii)
7 “fails to state a claim on which relief may be granted” or (iii) “seeks monetary relief
8 against a defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(B). A
9 complaint is frivolous when it has no arguable basis in law or fact. *Franklin v. Murphy*,
10 745 F.2d 1221, 1228 (9th Cir. 1984).

11 Pursuant to Federal Rule of Civil Procedure (FRCP) 8(a), a pleading that states a
12 claim for relief must contain:

13 (1) A short and plain statement of the grounds for the court’s jurisdiction, unless
14 the court already has jurisdiction and the claim needs no new jurisdictional
15 support.

16 (2) A short and plain statement of the claim showing the pleader is entitled to
17 relief; and

18 (3) A demand for relief sought which may include relief in the alternative or
19 different types of relief.

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21 While the pleading standard under FRCP 8 “does not require ‘detailed factual
22 allegations,’ it demands more than an unadorned, the-defendant-unlawfully-harmed-me
23 accusations.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The pleading must contain
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1 more than “labels and conclusions” or “naked assertions[s]” devoid of “further factual
2 enhancements.” *Id.* (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 557 (2007)).

3 When a plaintiff appears pro se in a civil rights case, “the court must construe the
4 pleadings liberally and must afford plaintiff the benefit of any doubt.” *Karim-Panahi v.*
5 *Los Angeles Police Dep’t*, 839 F.2d 621, 624 (9th Cir. 1988). However, this lenient
6 standard does not excuse a pro se litigant from meeting the most basic pleading
7 requirements. See, *American Ass’n of Naturopathic Physicians v. Hayhurst*, 227 F.3d
8 1104, 1107-08 (9th Cir. 2000).

9 To state a claim under 42 U.S.C. § 1983, a complaint must allege: (1) the
10 conduct complained of was committed by a person acting under color of state law, and
11 (2) the conduct deprived a person of a right, privilege, or immunity secured by the
12 Constitution or laws of the United States. *Parratt v. Taylor*, 451 U.S. 527, 535 (1981),
13 *overruled on other grounds, Daniels v. Williams*, 474 U.S. 327 (1986). Section 1983 is
14 the appropriate avenue to remedy an alleged wrong only if both of these elements are
15 present. *Haygood v. Younger*, 769 F.2d 1350, 1354 (9th Cir. 1985). Vague and
16 conclusory allegations of officials participating in a civil rights violation are not sufficient
17 to support a claim under Section 1983. *Ivey v. Board of Regents*, 673 F.2d 266, 269
18 (9th Cir. 1982).

19 *Bivens* actions are the judicially crafted counterpart to Section 1983. They enable
20 victims to sue individual federal officers for damages resulting from violations of
21 constitutional rights. *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971). To
22 state a claim under *Bivens*, a plaintiff must allege facts showing that: (1) a right secured
23 by the Constitution or laws of the United States was violated, and (2) the alleged
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1 deprivation was committed by a federal actor. *Van Strum v. Lawn*, 940 F.2d 406, 409
2 (9th Cir. 1991). “Actions under § 1983 and those under *Bivens* are identical save for the
3 replacement of a state actor under § 1983 by a federal actor under *Bivens*.” *Id.*

4 Before the Court may dismiss the complaint as frivolous or for failure to state a
5 claim, it “must provide the *pro se* litigant with notice of the deficiencies of his or her
6 complaint and an opportunity to amend the complaint prior to dismissal.” *McGucken v.*
7 *Smith*. 974 F.2d 1050, 1055 (9th Cir. 1992). On the other hand, leave to amend need
8 not be granted “where the amendment would be futile or where the amended complaint
9 would be subject to dismissal.” *Saul v. United States*, 928 F.2d 829, 843 (9th Cir. 1991).

10 Plaintiff has failed to allege any facts whatsoever and has failed to allege a
11 factual basis upon which plaintiff claims any entity or individual defendant is liable.
12 Plaintiff’s complaint baldly asserts that his rights have been violated, without explaining
13 who allegedly did or failed to do something that is related to those violations, or whether
14 any acts or omissions occurred that are attributable to any state or federal actor, or any
15 facts that would plausibly show causation – i.e., a series of facts that would show how
16 any acts or omissions, policies, customs, or practices, allegedly caused a deprivation of
17 his rights. These vague and conclusory allegations of wrongdoing without factual
18 support are frivolous and insufficient to state a claim pursuant to Section 1983.

19 Finally, plaintiff’s complaint appears to be based on allegations that the current
20 President of the United States, various former Presidents, various federal agencies, the
21 Queen of England, Canada and the United Nations conspired to commit treason and
22 crimes against plaintiff. These allegations do not appear to have any arguable basis in
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1 law or fact. Thus, plaintiff's complaint fails to state a claim under Section 1983, is
2 frivolous and any attempt to amend the complaint would be futile.

3 CONCLUSION

4 For the foregoing reasons, the undersigned recommends that plaintiff's
5 application to proceed in *in forma pauperis* should be DENIED.

6 Plaintiff has **fourteen (14) days** from service of this Report and
7 Recommendation to file written objections thereto. 28 U.S.C. § 636(b)(1); Federal Rule
8 of Civil Procedure (FRCP) 72(b); *see also* FRCP 6. Failure to file objections will result in
9 a waiver of those objections for purposes of appeal. *Thomas v. Arn*, 474 U.S. 140
10 (1985). Accommodating the time limit imposed by Fed. R. Civ. P. 72(b), the Clerk is
11 directed to set this matter for consideration on **June 4, 2021**, as noted in the caption. If
12 no objections are filed, and if plaintiff does not pay the filing fee, then the Court should
13 dismiss this case without prejudice.

14 Dated this 19th day of May, 2021.

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Theresa L. Fricke
18 United States Magistrate Judge
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